

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Curtis F. Nelson, Ted E. Amsbaugh,	)	
	)	
Plaintiffs,	)	<b>ORDER</b>
	)	
vs.	)	
	)	
Edward Byrne, Radcrete Pacific Pty. LTD.,	)	
an Australian corporation,	)	Case No. 1-16-cv-42
	)	
Defendants.		

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Before the court is a Motion to Substitute Party, wherein the Defendants seek to substitute Riina Klaas for Edward Byrne as a party in this action. (Doc. No. 43). The current motion indicates Byrne has died and Klass inherited Byrne’s interest in Radcrete Pacific and Tech-Crete, LLC. The Plaintiffs have not responded and their time for doing so has lapsed. D.N.D. Civ. L. R. 7.1(A)(1); D.N.D. Civ. L. R. 7.1(F) )(providing an adverse party's “failure to serve and file a response to a motion may be deemed an admission that the motion is well taken.”).

Fed. R. Civ. P. 25(a)(1) provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Counsel for the Defendants filed a notice of death with the court on November 30, 2017. (Doc. No. 42). The motion to substitute, filed on January 9, 2018, was within ninety (90) days of that filing. (Doc. No. 43). Additionally, the claims by and against Byrne remain.

Accordingly, substitution under Fed. R. Civ. P. 25(a)(1) is proper and the court **GRANTS** the Motion to Substitute Party. (Doc. No. 43). Riina Klaas shall be substituted for Edward Byrne

as a party in this action.

**IT IS SO ORDERED.**

Dated this 29th day of January, 2018.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr., Magistrate Judge  
United States District Court